IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 166 OF 2007
IN
CRIMINAL APPLICATION NO. 886 OF 2007

Mr. Sagar Moses David ..Applicant

Vs.

1. Mrs. Maritta C. Pereia and anr. ..Respondents

Mr. Prashant Badole for applicant.
Mr. Y.M. Nakhawa, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 26, 2007.

P.C.:

1. Heard Mr.Badole the learned counsel for the applicant who seeks to apply for special leave to appeal against the order of acquittal passed in Summary Criminal Case No. 13 of 2004 by the learned 4th Judicial Magistrate, First Class at Thane on 7/1/2006 but belatedly and, therefore, this application for condonation of delay. As per the office note the delay caused is of 357 days.

2. The learned counsel for the applicant stated that against the order of acquittal, the applicant had initially filed Criminal Revision Application on or about 10/2/2006 and the same came to be dismissed as not maintainable on 9/11/2006. This application has been filed on or about 26/2/2007 and, therefore, even with reference to the order dismissing the revision application, the applicant has not approached this court in time.

3. The applicant claims to be a petty contractor undertaking contracts for house repairs etc. He claims that the accused had entrusted him the house repair work, he attended the same and submitted his final bill on 23/11/2003 (Exh.17). The total bill amount was Rs.1,41,890/- and admittedly he had received a payment of Rs.91,600/- against the same. He, therefore, had to receive an amount of Rs.50,290/-. He claims that the accused issued him three cheques for a total amount of Rs.20,000/- bearing dates from 7/11/2003 to 18/12/2003 and all of them were dishonoured. He, therefore, issued a statutory notice under Section 138 of the Negotiable

Instruments Act, 1881 to the accused and the same was replied by her disowning any liability. She also pointed out that those cheques were given by way of security right in the beginning when the contract was being negotiated. She also pointed out that the complainant had not completed the repair work and only 50% of the work was done by him. She also pointed out that because of his deficiency in service, she had approached the Consumer Forum wherein the complainant was ordered to pay a sum of Rs.24,850/- and Rs.5000/- by way of damages to her. It was under these circumstances she claimed that she was not liable to pay the amount of Rs.20,000/- as covered by the dishonoured cheques.

4. The complainant had filed his affidavit by way of examination-in-chief and when he was in his cross-examination he admitted to have received an amount of Rs.91,600/-, that he had completed only 50% of the work when he submitted the bill at Exh.17 and he was ordered to pay an amount of Rs.24,850/- as well as Rs.5000/- by way of damages to the accused by the Consumer Forum in Case No. 19 of 2004 in respect of

the very same repair work. The learned Judge of the trial court, therefore, rightly held that cheques dishonoured were not for repayment of debt or any legal liability.

5. For all these reasons I am satisfied that this application for condonation of delay does not deserve to be allowed. The same is hereby rejected.

(B.H. Marlapalle,J.)